

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

WILLIS FLOYD WILEY
TDCJ-CID NO.753383,
Plaintiff,
v.

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CIVIL ACTION H-11-1144

AMERICAN ZURICH INSURANCE
COMPANY,
Defendant.

OPINION ON DISMISSAL

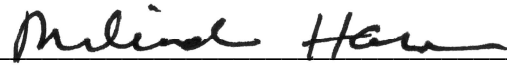
Plaintiff, a state inmate incarcerated in the Texas Department of Criminal Justice—Correctional Institutions Division, has filed a complaint, which he frames as a civil rights lawsuit pursuant to 42 U.S.C. § 1983. (Docket Entry No.1). Plaintiff has not submitted an application to proceed *in forma pauperis* nor paid the \$350.00 filing fee, although he has expressed his intent to pay the fee. (*Id.*). Given his litigation history, plaintiff may not proceed in federal court as a pauper under the “three-strikes” provision of 28 U.S.C. § 1915(g).¹ See *Willis v. Rescar Companies, Inc.*, Civil Action No.H-10-4434 (S.D. Tex. Jan. 26, 2011). Plaintiff’s complaint does not reflect that he is under imminent danger of serious physical injury; therefore, he does not meet the exception to the “three-strikes” provision of § 1915(g). See *Banos v. O’Guin*, 144 F.3d 883, 884 (5th Cir. 1998).

Because plaintiff has not paid the filing fee, the Court ORDERS that this complaint be DISMISSED without prejudice under 28 U.S.C. § 1915(g). Plaintiff may move to reopen this case if he pays the full \$350.00 filing fee within thirty days.

¹ Moreover, plaintiff’s federal claims against the American Zurich Insurance Company are subject to dismissal because they are conclusory and legally frivolous. Plaintiff states no facts to show that the insurance company is a state actor under 42 U.S.C. § 1983 or a public entity under the Americans with Disabilities Act or that the company engaged in any activity that violated his constitutional or statutory rights. Plaintiff’s remaining claims against the insurance company fall under state law.

The Clerk will provide a copy of this order to the plaintiff and a copy by facsimile transmission, regular mail, or e-mail to the TDCJ - Office of the General Counsel, Capitol Station, P.O. Box 13084, Austin, Texas, 78711, Fax: 512-936-2159, and the District Clerk for the Eastern District of Texas, 211 West Ferguson, Tyler, Texas 75702, Attention: Manager of the Three-Strikes List.

SIGNED at Houston, Texas, this 13th day of April, 2011.

A handwritten signature in black ink, appearing to read "Melinda Harmon", is written over a horizontal line.

MELINDA HARMON
UNITED STATES DISTRICT JUDGE